

APPLICANT NO. _____
ARKANSAS STATE BAR EXAMINATION
JULY, 2009

EQUITY & DOMESTIC RELATIONS

2 pages

I

Edith and Archie have been married for twelve years. They have lived in Arkansas for the last seven years. Edith and Archie have two children ages 9 and 14. One of the children was Archie's from a prior marriage that ended by the death of Archie's first wife. Edith adopted the 14 year old from Archie's previous marriage.

After moving to Arkansas, Edith and Archie bought a home and borrowed \$200,000 from National Bank, which they paid in full. After the original \$200,000 was paid, the couple borrowed \$150,000 from National Bank and executed a mortgage and an additional note to National Bank for that sum.

Edith and Archie sought to refinance the \$150,000 on their existing loan plus an additional sum necessary to pay off the couple's credit card and other debts. Third Bank agreed to loan the money subject to obtaining a first mortgage lien on the home property which had been mortgaged to National Bank for each of the two loans. It was discovered in processing the loan with Third Bank that National Bank had not released the original \$200,000 mortgage that had been paid off. Several requests were made to National Bank to release the mortgage lien on the paid note and to provide the payoff balance on the second loan mortgage in the original amount of \$150,000. National Bank did not respond. Edith and Archie stopped paying National Bank the monthly payments on the loan represented by the \$150,000 note. National Bank sued to foreclose on its loan, plus interest, costs, penalties and attorney fees. Edith and Archie counter-claimed seeking to cancel the balance of their indebtedness, all interest, cost, penalties and attorney's fees being sought by National Bank. Edith and Archie counter sued for monetary damages against National Bank for its failure to release the prior mortgage.

Question A: Discuss whether the Clean Hands Doctrine is likely to affect National Bank's enforcement of the note balance on the \$150,000 note of Edith and Archie, together with interest, costs, penalties and attorney fees as requested by National Bank in its foreclosure suit.

Question B: Since the Chancery Court, which is a court of equity, is requested by Edith and Archie to apply equity principals to prevent National Bank from enforcing its note, would the Chancery Court have jurisdiction to determine the law question of damages being sought in the counter-suit?

Question C: Would the Court have the right to cancel the note of National Bank under the Doctrine of Clean-Hands?

II

Assume that either Edith or Archie came to you requesting that you advise them on what would be required to obtain a divorce in the State of Arkansas. Please discuss the following regarding the Arkansas law requirements in order to: obtain a divorce; determine child custody; and, divide the property.

Question A: What is the residence requirement and residence proof in order to secure a divorce?

Question B: After the action for divorce is filed, how long must one wait to obtain a divorce?

Question C: Will the residence requirements have to be corroborated?

Question D: Will Arkansas law permit Edith or Archie to obtain a divorce without regard to either party being at fault?

Question E: State at least five (5) grounds for divorce provided by the Arkansas statute.

Question F: Under what circumstances are the grounds for a divorce in Arkansas required to be corroborated?

Question G: Discuss the division of property and debts under Arkansas law.

Question H: Would the fact that Edith had adopted the older child affect her request for custody of both children?

Question I: Assuming that an order of custody has placed the children with either Edith or Archie, what is the Arkansas standard that would allow for a change of custody order?

4) Please type your answer to Equity and Domestic Relations below
(Essay)

QUESTION 1:

(A) The Clean Hands Doctrine would affect National Bank's enforcement of the note balance on the \$150,000 note of Edith and Archie, together with interest, costs, penalties and attorney fees in the foreclosure suit. The Clean Hands Doctrine applies when a plaintiff sues a defendant and the defendant counter-claims against the plaintiff because the plaintiff is also guilty of wrongdoing that led up to the suit. Edith and Archie paid back the original \$200,000 in full. National Bank, however, did not release this original mortgage after it had been paid off. When Edith and Archie tried to secure a loan through Third Bank, Edith and Archie became aware that National Bank had not released the mortgage lien on the property. They made several requests to National Bank to release the lien and provide a payoff balance on the second loan mortgage they had obtained. National Bank did not respond to any of these requests. Edith and Archie stopped making payments on the \$150,000 loan due to the lack of response from National Bank. Therefore, in this situation it is plaintiff's initial wrongdoing that led the defendants to stop payments on the second loan. A court would likely take this into consideration under the Clean Hands Doctrine when determining the enforcement of the note balance, interest, costs, penalties and attorney's fees.

(B) Yes, because the Chancery Court is a court of equity and is being requested by Edith and Archie to apply equity principles to prevent National Bank from enforcing its note, the Chancery Court would have jurisdiction to determine the law question of damages being sought in the counter-suit. The Chancery Court determines who should receive what to allow for equitable distribution. Edith and Archie will use the Clean Hands Doctrine to counter-claim against

National Bank and the Chancery Court can adequately determine the damages that arose from both acts of wrongdoing.

(C) The Court would not have the right to cancel the note of National Bank under the Doctrine of Clean-Hands. The Clean Hands Doctrine applies when a plaintiff sues a defendant and the defendant counter-claims against the plaintiff because the plaintiff is also guilty of wrongdoing that led up to the suit. Edith and Archie would still owe on the second loan from National Bank, however the Court would have the right to issue monetary damages to Edith and Archie due to National Bank's failure to release the first mortgage. The Court would also have the right to deny National Bank's request for interest during the time Edith and Archie were refusing payments, costs, penalties for non-payment and attorney fees. These costs arose because of wrongdoing by both parties. The Court will decide who was more responsible for the problems that have caused the suit to be initiated. Under the Clean Hands Doctrine the Court will decide who is more at fault and issue damages to the other party. In the end, the note from National Bank will not be fully cancelled until damages are awarded.

QUESTION 2:

(A) What is the residence requirement and residence proof in order to secure a divorce?

In Arkansas, a person must show the court that they have resided in Arkansas for sixty days prior to filing for divorce. They must also show that the grounds for the divorce they are seeking will constitute grounds for divorce under Arkansas law and has occurred sometime in the preceeding five years. Residence can be proved by a party showing proof of a permanent

address, proof of employment in Arkansas, or proof that Arkansas taxes have been paid during the required course of residency.

(B) After the action for divorce is filed, how long must one wait to obtain a divorce?

For an uncontested divorce, a person will file for divorce and then wait thirty days for a court date where a judge will sign the divorce decree and grant that divorce. If the divorce is contested, both parties will have to show up in court to present their sides to the judge before the judge will grant a divorce.

(C) Will the residence requirements have to be corroborated?

Yes, a person filing for divorce can prove they are an Arkansas resident by showing proof of a permanent address in Arkansas for the past sixty days, proof of employment in Arkansas for the past sixty days, or proof that Arkansas taxes have been paid during the preceeding tax year. A witness can also confirm residency.

(D) Will Arkansas law permit Edith or Archie to obtain a divorce without regard to either party being at fault?

Arkansas is a fault state. This means that Edith and Archie will have to show that one party was at fault for the divorce. The only exception to this rule is if a couple seeking divorce has been fully seperated for eighteen continuous months. They have to have been seperated and living apart during that time. The parties are not allowed to falsely show one party is at fault to trick the court into granting a divorce. This is collusion and is not allowed by the court.

(E) State at least five grounds for divorce provided by the Arkansas statute.

Arkansas has several grounds that allow for divorce. These include (1) Cruelty - when one party

is so cruel to the other that they cannot be expected to remain in the marriage, which would include domestic abuse, (2) Adultery, (3) Habitual drunkenness for more than one year, (4) one party is imprisoned for a felony, and (5) general indignities - where one party treats the other in such a way that they cannot be expected to remain in the marriage. General dignities is not as extreme as cruelty. It can include constant cussing, belittling, accusations of adultery, etc. It has to be over a long period of time. A person cannot go to the court and say their spouse has belittled them for twenty days so they want a divorce.

(F) Under what circumstances are the grounds for a divorce in Arkansas required to be corroborated?

In contested divorces, the grounds for a divorce in Arkansas are required to be corroborated.

(G) Discuss the division of property and debts under Arkansas law.

Under Arkansas law, a court will look at several factors when determining division of property. These factors include (1) the health of each party, (2) the age of each party, (3) the length of the marriage, (4) tax consequences of the division, (5) vocational skills of each party, (6) occupation of each party, (7) income of each party, (8) contributions to the marriage, and (9) the employability of each party. The court will look at these factors and decide on an equitable division of the property. A court will not use division of property to punish one party over the other. The main goal is to allow each party to live almost as comfortably after the divorce as they did during the marriage.

(H) Would the fact that Edith had adopted the older child affect her request for custody?

Yes, Edith would be allowed to request custody of the older child. When a child is adopted, the adopted parent becomes their real parent under the law. Edith and Archie have been married

for twelve years and the older child is only 14. Therefore Edith is the only mother this child has ever known. The Court will take this into consideration when deciding the best interests of the child. Because Edith adopted the older child, she has the same rights as a natural parent in child custody.

(I) Assuming than an order of custody has placed the children with either Edith or Archie, what is the Arkansas standard that would allow for a change of custody order?

In order to change a custody order, the parent asking for the change must show the court that there has been a material change in circumstances that would call for a change in custody. The material change can be in either party's situation. The court will always look at the best interest of the child in determining custody and change of custody orders. There are twelve factors the court will look at in determining the best interest of the child. These factors are (1) moral fitness of the parents, (2) age, health and gender of the child, (3) disruption to the child's life, (4) the physical and mental health of the parents, (5) the attitude of the parent towards the child, (6) need for stability in the child's life, (7) desire of the parents to have custody, (8) continuation of possible religious education, (9) affection of the parents toward the child, (10) past conduct between the parents and the child, (11) preferences of the child, and (12) the parent's psychological relationship with the child. All of these will be examined by the court to determine best interest of the child and material change in circumstances. Material changes in circumstances include income, housing, employment, re-marriage of either party, living situation of either party and preferences of the child.

END OF EXAM

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TORTS
2 pages

The Food Universe market opened its doors for business each day at 7:00 am. The market closed at 10:00 pm on Monday through Saturday and at 8:00 pm on Sunday. John Jet, the owner of the market took great pride in the design and construction of the new environmentally friendly business. He also paid keen attention to creating an aesthetically pleasant shopping experience for his patrons.

The interior of the Food Universe building was painted in colors of the earth, changing from one department to the next. The lighting of the store was soft and of low intensity. John installed a state-of-the art music system in the market to soothe the spirits of his shoppers. Instead of synthetic tile or bland concrete floors, John selected large slabs of marble to cover the floors throughout the market. John stocked the shelves of the market with only high quality and exotic foods from every corner of the world.

In order to insure a quality shopping experience John also required that all maintenance and routine cleaning were to be performed only during the hours the market was closed. There were of course exceptions as a need arose.

On the evening of March 31, 2009 after the store closed for the night, Mike, a stock clerk at the market, began his work to replenish the food displays throughout the many departments in the store. Mike's last task was to re-stock the display of imported olive oil on aisle 3. Opening hour was fast approaching, but Mike with great pride opened each cardboard box of the oil and lined the colorful plastic bottles along the shelf. He did not notice that in opening one of the cartons his box cutter knife nicked the bottom of one of the bottles of oil. His work was completed just as the doors of the market were unlocked to welcome the customers of Food Universe. Mike gathered the cardboard boxes and returned to the stock room. Mike did not notice that the olive oil from the nicked bottle was leaking and pooling on the marble floor in the aisle.

William and Mary were loyal customers of Food Universe and often stopped by early in the morning for "coffee to go" purchased at the deli within the store. This morning, April 1, 2009 they arrived and while William parked the car near the front entrance Mary waited at the entrance for the market to open. As the doors were unlocked for business Mary entered and walked towards the deli. Her route took her down aisle 3. As she passed the olive oil display Mary lost her footing, slipped and fell violently to the marble floor. She had stepped into the pool of oil that had accumulated from the leaking bottle. She lost consciousness as her head struck the floor.

Mary was rushed to the nearby hospital. Although Mary was expected to fully recover from her head injury she and William were told the road to recovery would be long and the medical and rehabilitative expenses great. Mary lost her very lucrative employment and focused all of her time, and much of William's too, on her recovery. They made a claim with Food Universe for payment of the medical expenses and financial assistance because of the loss of income. Food Universe rejected the claim. William and Mary retained a lawyer to bring a suit against the market for damages.

Assume that Arkansas law governs in the law suit brought by William and Mary.

- 1). What duty does Food Universe owe to Mary to protect her from harm? What are the elements of the cause of action their attorney will likely bring on their behalf against Food Universe?
- 2). What are the prospects for success in the lawsuit? What facts exist that support their claim?

1) Please type your answer to Torts below

When finished with this question, click the blue arrow button above to advance to the next question. (Essay)

1. Food Universe owes a duty to Mary as an invitee because Mary is on the Food Universe property as a customer benefitting Food Universe. Thus, Food Universe has a duty to warn Mary of known dangerous conditions and to make a reasonable inspection the property to locate potential other dangerous conditions. Mary's attorney can bring a cause of action against Food Universe for negligence. In order to succeed in this suit, the plaintiffs will have to show four elements: 1) duty; 2) breach of that duty; 3) proximate cause; and 4) resulting damages.

In this case, duty is based on Mary's status as an invitee. As stated earlier, Food Universe is required to warn Mary of known dangers and inspect the property for other dangers arising from artificial conditions created by Food Universe. To show a breach of this duty, Mary will have to present evidence that Food Universe either knew of the dangerous condition and failed to warn its customers, or should have known of the condition from reasonable inspection of the property. To show proximate cause, Mary will have to present evidence that Food Universe's failure to warn Mary of the dangerous condition was the actual cause of her injuries. Mary can prove her damages by showing her actual injuries and by showing her economic losses.

2. Mary's chances of succeeding in this lawsuit are relatively high. She has several facts that help her show each of the elements of her negligence claim.

Duty

Mary can easily show that Food Universe owed her a duty. As a regular paying customer, she can easily show that she was an invitee who entered the store to purchase coffee. Store patrons easily fall into the category requiring a more extensive duty than for trespassers or even licensees. Thus, Mary will be able to show Food Universe owed a duty to warn her of known dangerous conditions and make reasonable inspections of the property to discover dangerous conditions, especially artificial conditions created by the store.

Food Universe might argue that it had no duty to warn Mary of the oil spill because the oil on the ground should have been apparent. Generally, property owners have no duty to warn others of dangerous conditions that are open and apparent and should be reasonably discovered by the individual. However, Mary would probably counter that olive oil on the ground is not open and apparent and a customer would not be reasonably expected to see the spill in time to avoid it. This argument is supported by the fact that Mike, Food Universe's employee, failed to notice the spill when he caused it. This is also supported by the facts stating the colors and lighting in the store. The store is painted in earth tones and the lighting is soft and of low intensity, making it abnormally difficult for a reasonable store patron to notice an oil spill.

Breach of Duty

Mary will also have to present evidence showing Food Universe's breach of their duty. She may show this either with proof that Food Universe knew of the oil spill and did not warn customers or remove it or that though Food Universe did not have actual knowledge of the spill, they could have discovered it with reasonable inspection of the premises. There are no facts to suggest that Food Universe had actual of the spill because Mike did not realize he nicked the container during re-stocking and nothing suggests anyone had reported the spill to Food Universe employees. However, Mary can present facts to show that Food Universe would have

discovered the spill had they conducted reasonable inspections of the store. The facts indicate that Food Universe has a policy of conducting routine cleaning and maintenance only during the hours the store was closed. However, spills and accidents are common and foreseeable in grocery stores, requiring regular inspection and cleanup. Mary can show that Food Universe's failure to routinely inspect the store during business hours prevented them from discovering the oil spill, whereas a regular routine of store inspection throughout the day might have provided Food Universe with a defense to Mary's claims.

Food Universe will likely argue that it made every attempt to clean up spills and accidents as soon as they happened, as evidenced by their exceptions in cleaning only at night. However, without a policy of routinely inspecting the store during the hours in which customers are present and accidents are likely to occur, a court will probably find that Food Universe breached its duty.

Mary could also use the materials in the store as proof of breach of duty. The floors were covered in large slabs of marble, an inherently slick surface. This in itself creates an artificially dangerous condition, which would likely require Food Universe to make even more extensive inspections, or at the very least, warn customers of the higher potential for slipping on the slick surface.

Causation

Mary will have to show evidence that the breach of Food Universe's duty to discover the oil spill was the proximate cause of her injuries. This is a simple enough task because she can show that her injuries were the direct result of her striking her head on the marble floor, and but for the oil spill, she would not have slipped. She may recover damages not only for her actual

injuries, such as medical bills and pain and suffering, but also for her employment loss and possibly William's time and effort in assisting her with rehabilitation. To receive these damages, she will have to show that Food Universe's negligence was the proximate cause of these additional damages. These damages are generally recoverable, because they are the direct result of her fall and would not have occurred but for Food Universe's negligence.

Damages

Mary can recover several types of damages. She can recover general damages arising out of her injury, such as medical bills, rehabilitation costs and pain and suffering. She can also recover special damages resulting from her injury, such as loss of employment. William can probably seek damages for his time spent in aiding Mary's recovery. The fact that Mary actually lost her job supports this claim.

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PROPERTY

1 page

"A" owns a farm adjacent to the State owned landfill, near Jonesboro, Arkansas. In October, 2008, "A" signs and delivers a beneficiary deed to son "B", which is properly recorded. "B" moves into the house on the farm, fences the farm in, and pays the real property taxes for the next eight years.

In November, 2008, "A" signs a quitclaim deed on farm to "C". "A" wants time to think about giving the farm to "C". "A" sticks a signed deed in his desk drawer without telling "C" about the deed.

In December, 2008, "A" signs a warranty deed on the farm to "D", who is fifteen years old. "A" and "D" take the deed to be recorded at the courthouse.

In October, 2016, natural gas deposits have been discovered in the area near the farm. "B" has the land tested to determine if the farm has gas deposits. In the course of testing, the Environmental Audit Company determines that half of the farm contains a poisonous mercury that has leached (seeped) from the landfill.

Seaco, a natural gas exploration company, still wants to drill on the uncontaminated portion of the farm. However, it cannot come to terms with the true owner (whether it be "A", "B", "C", or "D").

"E", the owner of the land next to the farm, is tired of the surface water running from the farm onto "E"'s land. "E" builds an earthen dam along his own boundary line to prevent such. The surface water begins to pool on the farm (owned by "A", "B", "C", or "D").

QUESTIONS

1. In the year 2016, what ownership interest, if any, do "B", "C", and "D" have in the farm, and why?
2. What remedy, if any, do the non-owners(s) have against "A"?
3. What recourse, if any, does the true owner of the farm have against the state? What legal procedure would the owner utilize (ie: what is the action called)?
4. What, if anything, can the gas drilling company do to force true owner to allow the drilling for natural gas? Explain.
5. What remedy, if any, does the true owner of the farm have against "E" regarding the earthen dam?

2) Please type your answer to Property below

When finished with this question, click the blue arrow button above to advance to the next question. (Essay)

(1) B is not the owner of the land by way of adverse possession. In Arkansas, the period of time for adverse possession is 7 years. Adverse possession requires continuous possession and open and notorious use of the land. In Arkansas, in order to assert an adverse possession claim, the possessor must also pay the property taxes on the land for the 7 years. B moved into the farm in October 2008, which gives him 8 years of occupation. This is a continuous and open and notorious use of the land. B also made use of the full land, as indicated by fencing in the farm. However, adverse possession also requires a hostile taking of the land, meaning that possession is taken without consent, either explicit or implicit, by the true owner. As the facts indicate, B is the son of A. Presumably, A was aware that B took possession of the house and the farm. Therefore, there was not a hostile taking. Even if B was not aware that A had taken possession of the farm, the presumption of the courts is typically in favor of the true owner and not the adverse possessor. By way of equity and public policy, the courts want to give ownership to the title owner and not award a benefit on a hostile taker of land.

B is not the owner by the beneficiary deed. Beneficiary deeds create a future interest that may be revoked by the grantor at any time prior to the grantor's death. The grantee retains an interest in life estate until revocation or death. The deed may be revoked by recording a subsequent deed on the same land. The beneficiary deed was revoked when A recorded the Warranty Deed.

C has no interest in the land. A deed is effective upon execution and delivery. The facts indicate

that there was not a delivery of the Quitclaim Deed to C. There was no actual delivery because the deed remained in the desk drawer and there was no constructive delivery because A did not tell C that the deed had been executed. Additionally, Arkansas has a race-notice statute. In a race-notice jurisdiction, a conveyance of land takes priority where it is taken for value without notice of any prior conveyances and properly recorded in the county where the land is located. The subsequent Warranty Deed was recorded in the courthouse. Therefore, a subsequent conveyance was properly recorded prior to a recording of the Quitclaim Deed. C received no conveyance and the deed was ineffective for failure to deliver to the grantee.

D is the owner of the land. The facts do not state otherwise, so presumably D takes in fee simple, which is the default ownership interest unless otherwise specified in the conveyance of title. Fee simple is an absolute ownership interest in the land. Minors may take an ownership interest in real property. The only caveat to that interest is that upon reaching majority, the minor may disclaim his interest in the land. Therefore, even though the farm was conveyed to D when he was 15, in 2016, D has reached the age of majority, and the facts do not indicate that he has disclaimed his interest in the land.

(2) B and C do not have a remedy against A. B held only a future revocable interest in the farm. The facts do not indicate that there was a breach of contract between A and B for B's failure to convey the farm to B, nor was A unjustly enriched by B's possession of the farm and payment of property taxes. B received benefit from paying the taxes by living on the farm.

C does not have a remedy against A because C never had an interest, present or future, in the farm. There are no facts that indicate a breach of contract between A and C.

D may have a claim against A for breach of the covenant that is conveyed with the warranty

deed. A warranty deed conveys the covenant of habitability from the grantor to the grantee, meaning that D may take immediate possession. A must disposses B of the land. This is specific performance. Because it has ensued for the 8 years, D may be allowed any compensatory damages incurred. In a property dispute it is unlikely that the court would allow a defense of consession by B claiming that D conceded to allowing B to possess the land. A warranty deed also conveys a warranty against encumbrances. An encumbrance typically means for example a lien or easement. There may be an issue as to whether or not the mercury is an encumbrance on the property. If the court holds that it is an emcumbrance, then A may be liable to C. However, a grantor's liability to a grantee is limited to the value received for the warranty deed. D did not give value to A for the deed. Therefore, D may not recover compensatory damages. The facts do not indicate any other measures by which D may be granted money damages.

(3) The true owner may have a claim against State for trespass of property and nuisance. In the alternative, the true owner may be barred from bringing action against the state. Typically, State has immunity from tort liability. However, when the state acts in the manner that is typically reserved for a corporation, then it is not immune from tort liability. Courts have held that states acting as utility companies are immune. Whether the state owned landfill is a business that is typically conducted by a private corporation is an issue of fact for the fact-finder. The true owner may bring an action for injunction against the state to prevent the further action that may allow seepage into the farm.

(4) The gas drilling company may bring action against the true owner to compel the drilling of natural gas by way of the government. The U.S. Supreme Court has allowed a government taking of private property when it is for the public benefit. The taking requires value given to the

landowner for the loss of the land. The government may claim that the natural gas will incur a benefit to the public as a whole that requires the taking of the private land.

Alternatively, some courts have held that the gas and mineral rights are implicitly retained by the original owner. This would trace the owner, as to these facts, to A. Seaco may compel A as the owner of retained gas rights to allow the to drill and pay the true owner for any loss to the land.

(5) The true owner may have an action against E for trespass of property or nuisance. Trespass of property is the intentional touching of another's property. Nuisance is the actions of another party resulting in the loss of quiet enjoyment of the land. In order to prove trespass, D must prove that in building the dam, E intended for the water to collect on D's farm. Proving such may be too indirect to prove the intentional element of trespass. D will likely fail on a nuisance claim as well because D does not occupy the land; therefore, he does not suffer from loss of enjoyment of the land.

END OF EXAM

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WILLS, ESTATES, AND TRUSTS
2 pages

On June 1, 2006, Paul Mack, a resident of Arkansas, died in an automobile wreck. Paul was survived by:

1. His son, Martin Luther, and Martin Luther's sons, Phil and Don;
2. Ian and Michael, the children of his predeceased son, John;
3. His sister, Suzy;
4. His former wife, Linda, who he divorced on June 1, 2005; and
5. His aunt, Jen Mack.

On June 2, 2006, Paul's son, Martin Luther, and Aunt Jen, both died from injuries sustained in the automobile accident in which Paul was killed.

On June 15, 2006, Paul's safe deposit box was inventoried and the following documents were found:

1. Paul's original Will, dated June 15, 2004, which was validly executed with all required formalities. The Will contained these provisions:
 - a. All certificates of deposit be transferred to "my Auntie Jen, if she survives me";
 - b. Blueacre, which I inherited from Uncle Ernie, to my son, Martin Luther, and my sister, Suzy, in equal shares;
 - c. My collections "to my wife, Linda, if she survives me, but if she does not survive me, then to those of my descendants who survive me, per stirpes."
 - d. All the rest of my estate to my son, Martin Luther, if he survives me, but if not, then to those of my descendants who survive me, per stirpes.
2. Cash, stocks and bonds totaling \$200,000;.
3. A record collection worth \$10,000;

4. Two original certificates of deposit issued by Liverpool Bank, each dated June 1, 2003, titled as follows:
 - a. Certificate of Deposit #1: "Paul Mack, payable on death to my son, Martin Luther Mack."
 - b. Certificate of Deposit #2: "Paul Mack, payable on death to my wife, Linda Mack, if she survives me, but if she does not, then to my Aunt Jen."
5. Paul's deed to Blueacre, and a valid mortgage on it to Liverpool Bank to secure a promissory note with a balance of \$100,000;

Paul's Will has now been admitted to probate and a personal representative has been appointed.

Answer the following Questions: (Explain your answers fully).

- a) Who is entitled to receive Certificate of Deposit #1?
- b) Who is entitled to receive Certificate of Deposit #2?
- c) Who is entitled to Blueacre?
- d) Who will have to pay the balance owed on Blueacre, *i.e.*, will it be paid out of the general assets of the estate, or by the recipient of Blueacre?
- e) Who gets the record collection?
- f) Who is entitled to receive the remainder of the Paul Mack estate?

3) Please type your answer to Wills, Estates, Trusts below

When finished with this question, click the blue arrow button above to advance to the next question.

(Essay)

1. Phil, Don, Ian, and Michael are entitled to receive the Certificate of Deposit #1 in equal shares. The designation of the beneficiary on the CD was a non probate transfer of the property upon death. The named beneficiary, Martin Luther, is deemed to have predeceased Paul because he did not survive Paul by at least 120 hours. As a result, the transfer of the CD to Martin Luther lapses. The Arkansas anti lapse statute does not apply to non probate transfers. Thus, the transfer is permitted to lapse and the CD #1 is distributed according to the testator's will. The will designates that Aunt Jen take the CD, but Jen also is deemed to have predeceased Paul because she did not survive him by at least 120 hours. The Arkansas anti lapse statute applies to devises made to descendants of the testator. Jen is not a descendant, so the gift is allowed to lapse. Thus, the CD is distributed according to the residuary clause. The residuary is to go to Martin Luther, who is considered predeceased as discussed. Again the anti lapse statute does not apply, but this time it is because Paul made other arrangement in the will. Paul designated that his surviving descendants take per stirpes. Therefore, Phil, Don, Ian, and Michael take the CD #1 in one-quarter shares (because there are two sons of each of Paul's two sons, leaving four grandchildren).

2. Linda is entitled to receive CD #2. Linda is Paul's ex-wife. All gifts to Linda in Paul's will were revoked by operation of law at the time of the divorce, but this rule does not apply to non-probate transfers. The beneficiary designation on the CD is a non-probate transfer. Linda survived Paul and is therefore available and able to take the CD. The clause in the will

regarding the CDs is not effective to transfer CD #2 because it is otherwise validly transferred outside the will and is thus not part of the probate estate available for distribution. Therefore, Linda is entitled to receive the CD #2 according to the beneficiary designation found on the CD.

3. Phil and Don are entitled to one-quarter interests in Blueacre along with Suzy's one-half interest in Blueacre, all as tenants in common. Blueacre was given in the will to Martin Luther and Suzy in equal shares. As discussed, Martin Luther is deemed to have predeceased Paul because he did not survive by 120 hours. Because Martin Luther is a descendent of Paul who died leaving issue, the anti lapse statute applies to this gift. (Suzy does not step in and take because this is not a class gift, and even if it were, the class gift rule would prevent her from taking because of the application of the anti lapse statute.) Through the anti lapse statute, Phil and Don will take Martin Luther's share through representation. Suzy is alive and can take her one-half interest in the property. Therefore, Phil and Don each receive a one-quarter interest in Blueacre (dividing in two the one-half interest of Martin Luther) and Suzy receives and one-half interest in Blueacre.

4. The balance of the mortgage on Blueacre will be paid out of the assets of the estate. An encumbrance on property passed in a will is exonerated by payment of the encumbrance by the estate assets unless it is clearly noted otherwise by the testator. No facts suggest that Paul made this desire known. Therefore, the general rule applies and the mortgage encumbrance on Blueacre will be satisfied by general assets of Paul's estate.

5. The clause in the will regarding "collections" is sufficiently clear to include the record collection and the record collection will go to Phil, Don, Ian, and Michael in equal one-quarter shares. The collections were originally intended for Linda, but through the divorce this provision

was revoked by operation of law and Linda is considered predeceased. Paul made other arrangements in his will for this situation and that arrangement controls. Paul designated his surviving descendants to take per stirpes, which as discussed above, means that Phil, Don, Ian, and Michael take one-quarter shares as the grandchildren of Paul (two sons of Martin Luther and two sons of John).

6. The remainder of the estate will go to Phil, Don, Ian, and Micheal in one-quarter shares. The residuary of the estate was left to Martin Luther, who again is deemed to have predeceased because of the 120 hour survival rule. Paul declared in the will that if Martin Luther predeceased, Paul's surviving descendants would take per stirpes. This provision avoids the application of the anti lapse statute. If the anti lapse statute had applied, only Phil and Don would be entitled to the remainder of the estate. Because of the provision in Paul's will, Phil, Don, Ian, and Michal take one-quarter shares (two sons of each of Paul's two sons).

END OF EXAM